

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-16-90010

BEFORE
Torruella, Thompson and Barron, Circuit Judges
Casper and Delgado-Hernández, District Judges

ORDER

ENTERED: MARCH 6, 2017

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Howard's order dismissing his complaint, under 28 U.S.C. § 351(a), against the First Circuit district judge who presided over his civil case. Petitioner alleged that a form that the district court clerk's office completed in his case contained multiple errors and evidenced misconduct by the judge. Chief Judge Howard dismissed the complaint as frivolous.

In the original complaint, petitioner alleged that a form prepared by the clerk's office failed to identify petitioner as proceeding *in forma pauperis* (IFP) and included an error in the district court case number. Petitioner alleged that the error regarding his IFP status was an obstruction of justice and violated the governing federal rule of appellate procedure. Petitioner asserted that the failure to correct the form immediately denied petitioner due process and the right to appeal.

Because petitioner failed to make any allegations or provide any evidence of misconduct by the judge, Chief Judge Howard dismissed the misconduct complaint. The Chief Judge explained that any errors by clerk's office staff were neither attributable to the district judge nor suggestive of misconduct. See, e.g., Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-13-90015, Dec. 18, 2013, at 3-4 (citing Boudin, C.C.J., Amended Order, In Re Judicial Misconduct Complaint No. 406, Sept. 5, 2005, at 3). Accordingly, Chief Judge Howard dismissed the complaint as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C).¹


In the petition for review, petitioner repeats his allegations that the errors on the form were an obstruction of justice and attributes responsibility for the errors to the presiding judge. Petitioner also asserts that materials he submitted with his original complaint support allegations, first presented in the petition for review, that the judge was biased in favor of certain defendants in the case because they are clients of the judge's former law firm in unrelated matters. Petitioner further alleges in the petition for review that the judge engaged in numerous federal crimes, should be "consider[ed] for Impeachment," should have recused from his case and was improperly motivated by partisan politics.

¹ While noting that it was not necessary to the resolution of the misconduct complaint, Chief Judge Howard explained that clerk's office staff promptly issued an amended form with both of the requested corrections.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for petitioner's requested relief, including removal or recusal of a judge. See 28 U.S.C. § 351 *et seq.* and Rules of Judicial-Conduct, Rules 11, 19 and 20.

The petition for review is meritless. Petitioner provides no evidence of improper judicial motive or other wrongdoing that would undermine Chief Judge Howard's determinations. As the Chief Judge explained, any clerical errors by clerk's office staff were neither attributable to the presiding judge nor indicative of misconduct. See In Re Judicial Misconduct Complaint No. 01-13-90015, supra, citing In Re Judicial Misconduct Complaint No. 406. Further, petitioner's newly asserted and conclusory allegations that the judge acted with bias, was improperly motivated or committed crimes are wholly unsupported. Neither the original complaint, the supplementary submissions, the reviewed record, nor the petition for review present any facts suggestive of wrongdoing by the judge. Therefore, Chief Judge Howard appropriately dismissed the complaint, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

3/6/17
Date



Susan Goldberg, Secretary